

REMARKS**I. Status of the Claims**

The status of the claims is as follows:

Claims 1-15 are original;

Claim 16 is cancelled.

II. Summary

Applicant's invention is a the bituminous water vapor retarder membrane that has a multi-layer core comprising an aluminum sheet, laminated between a pair of thermoplastic sheets. The thermoplastic sheets are preferably polyester and the aluminum sheet is laminated to the polyester sheets with a low density polyethylene adhesive.

This laminated aluminum foil-polyester core is in turn laminated between a pair of fabrics at least one of which is impregnated with asphalt. The asphalt saturated felt fabric layer is adhesively secured to the core by an asphalt coating.

In like manner, a fiberglass scrim is adhesively secured to the core by means of an asphalt coating, with the surface of the polyester sheets adjacent the asphalt coating being covered with an adhesion promoter.

Thus, the migration of water vapor from an underlying support surface such as the ground or gravel to an overlying porous slab such as a concrete slab, can be substantially inhibited by a method which comprises placing a multi-layer bituminous membrane on the supporting surface, the bituminous membrane comprising an aluminum sheet laminated between a pair of polyester sheets to form a multi-layer core with the core being laminated to at least one fabric sheet impregnated with asphalt, and placing the concrete slab on top of the bituminous membrane.

III. Remarks**a. Election/Restriction Under 35 U.S.C. 121**

In response to the above identified action, the applicants have the following election.

The applicants provisionally elect to prosecute Group I, claims 1-15, which are drawn to a membrane. Claim 16 has been cancelled as the non-elected group.

b. Rejection of Claims 1-5, 7, 8 and 14 (35 U.S.C. 103)

In the office action claims 1-5, 7, 8 and 14 were rejected under 35 U.S.C. 103(a) as being unpatentable over Cohen et al. (US 2004/0161615) in view of Hageman (US 2004/0261347). The earliest priority date of Cohen et al. is December 27, 2002 and the earliest priority date for Hageman is July 16, 2003, both of which are well after applicants' dates of conception and reduction to practice, as shown in the Exhibits attached to applicant's 131 affidavit, attached hereto. Given applicants' 131 affidavit and supporting documentation, Claims 1-5, 7, 8 and 14 are not rendered obvious by Cohen et al. in view of Hageman.

c. Rejection of Claims 6 (35 U.S.C. 103)

Claim 6 was rejected under 35 USC 103(a) as being unpatentable over Cohen et al. and Hageman, as applied to claim 1, and further in view of Consentino (US 2004/0097157). Applicants' 131 affidavit clearly shows a date of invention that predates both Cohen et al. and Hageman. Consentino, considered alone or in combination with other references does not teach, suggest, disclose or render obvious the invention of claim 6. Thus, claim 6 is not rendered obvious in view of Cohen et al. in view of Hageman and in further view of Consentino.

d. Rejection of Claims 9-13 and 15 (35 U.S.C. 103)

Claims 9-13 and 15 were rejected under 35 USC 103(a) as being unpatentable over Cohen et al. and Hageman as applied to claims 1-8, 1- and 14 and further in view of Lynn et al. (US 2004/0261347). As previously stated, applicants' 131 affidavit clearly shows a date of invention that predates both Cohen et al. and Hageman. Lynn et al., considered alone or in combination with other references does not teach, suggest, disclose or render obvious the invention of claims 9-13 and 15. Thus, claims 9-13 and 15 are not rendered obvious in view of Cohen et al. in view of Hageman and in further view of Lynn et al.

IV. Conclusion

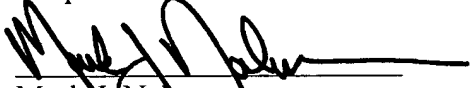
For the reasons stated above, applicant requests allowance of pending claims 1-15.

Please contact applicant's undersigned attorney if there are other issues which could assist in expediting prosecution of this application.

No fees are believed due at this time, however, please charge any deficiencies or credit any overpayments to deposit account 12-0913 with reference to our attorney docket number 920036-94963.

Date: September 19th, 2005

Respectfully submitted:


Mark J. Nahnsen
Registration No. 51,093
Barnes & Thornburg LLP
P.O. Box 2786
Chicago, Illinois 60690-2786
312-357-1313